

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
JUL 05 2016
Clerk, U.S. District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

JACKSON BRYANT BAUGUS,

Defendant/Movant.

Cause No. CR 02-133-BLG-SPW
CV 16-105-BLG-SPW

ORDER DISMISSING AND
TRANSFERRING
§ 2255 MOTION AND DENYING
CERTIFICATE OF APPEALABILITY

This case comes before the Court on a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. Defendant Baugus is a federal prisoner proceeding pro se. He seeks relief under the rule of *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015).

Baugus has already litigated one § 2255 motion to conclusion as well as various other motions seeking to reopen or reinstitute proceedings under § 2255. *See* Mot. § 2255 (Doc. 180); Order (Doc. 187); Appellate Order (Doc. 211). As Baugus knows, *see* Orders (Docs. 210, 249), this Court lacks jurisdiction to consider an unauthorized second or successive motion under 28 U.S.C. § 2255, *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

The Court of Appeals, however, has jurisdiction. Because the motion was timely filed in this Court, and because Baugus might be entitled to relief (though

the Court expresses no opinion on that point), it is in the interests of justice to transfer the motion to the Court of Appeals as an application for leave to file a second or successive motion under 28 U.S.C. § 2255. *See* 28 U.S.C. § 1631.

A certificate of appealability is not warranted. *Burton* is plainly controlling. Further, transfer should preserve Baugus's filing date in the Court of Appeals. *See Orona v. United States*, No. 16-70568, slip op. at 3 (9th Cir. June 22, 2016).

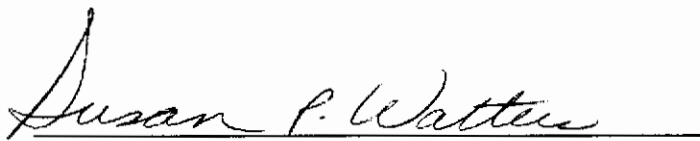
Accordingly, IT IS HEREBY ORDERED as follows:

1. Baugus's motion under 28 U.S.C. § 2255 (Doc. 257) is DISMISSED and TRANSFERRED to the Court of Appeals as an application for leave to file a second or successive § 2255 motion in this Court.

2. A certificate of appealability is DENIED. The Clerk shall immediately process the appeal if Baugus files a notice of appeal.

3. The clerk shall ensure that all pending motions in this matter and in CV 16-105-BLG-SPW are terminated and shall close the civil file by entering a judgment of dismissal.

DATED this 5th day of July, 2016.


Susan P. Watters
United States District Court